

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 96-1285 (RCL)
)	
GALE NORTON, Secretary of the)	
Interior, et al.,)	
)	
Defendants.)	
)	

ORDER

For the reasons stated in the memorandum opinion issued this date, it is hereby

ORDERED that defendants shall have seven (7) days from the date of this Order in which to submit to the Special Master-Monitor (“the Monitor”) an affidavit that conforms with the requirements for proper invocation of the deliberative process privilege with respect to Attachment C of the August 8, 2002 Special Report of the Monitor (“Attachment C”). It is further

ORDERED that plaintiffs shall have seven (7) days from the date on which defendants submit the above-mentioned affidavit to the Monitor in which plaintiffs may submit a statement to the Monitor setting forth the reasons for their need of the information contained in Attachment C in the instant litigation. It is further

ORDERED that defendants shall have five (5) days from the date on which plaintiffs submit the above-mentioned statement to the Monitor in which defendants may submit to the Monitor a reply to plaintiffs’ statement. It is further

ORDERED that if plaintiffs file with the appropriate special master a motion to compel the production of any document for which defendants have asserted the protection of the deliberative process privilege, then on or before the date that defendants are required to file their opposition brief, defendants shall (1) submit an affidavit to the appropriate special master from the head of the bureau or office having custody of the document that describes the document in general terms, explains why the privilege should apply, and states in detail the harm that would result from disclosure, and (2) submit the document to the appropriate special master for in camera inspection. Any failure to comply with these two requirements on the date that defendants assert an objection based on the deliberative process privilege will be deemed to constitute a waiver of defendants' objection to production of the document on the basis of the deliberative process privilege. If defendants comply with the above-mentioned requirements, then on or before the date that plaintiffs are required to file their reply brief, plaintiffs shall submit a statement with the appropriate special master that sets forth the reasons for their need of the information contained in the document. No further filings by either party will be permitted except by express leave of the Court. It is further

ORDERED that plaintiffs' motion to compel testimony of deponents defendants directed not to answer questions on the basis of deliberative process privilege [1691-2] be, and hereby is, GRANTED. It is further

ORDERED that if defendants assert any future objections based on the deliberative process privilege with respect to a witness at a deposition, plaintiffs will have seven (7) days from the date on which defendants made their assertion to submit to the appropriate special master a copy of the unanswered questions, together with a detailed statement setting out the reasons why plaintiffs need

answers to these questions. Within seven (7) days from the date that these documents were filed with the Court, defendants shall (1) file an affidavit with the appropriate special master from the head of the bureau or department possessing control over the requested information that contains (a) an assertion of the privilege based on actual personal consideration by that official, (b) a detailed specification of the information for which the privilege is claimed, along with an explanation why it properly falls within the scope of the privilege, and (c) a detailed statement of the harm that would result from disclosure of the information that falls within the scope of the privilege; and (2) file under seal with the appropriate special master a detailed summary of the responses that the witness would have provided if defendants had not asserted the deliberative process privilege. Any failure by defendants to comply with these two requirements within seven (7) days will be deemed to constitute a waiver of the objection. It is further

ORDERED that plaintiffs' motion for an order pursuant to Rule 53(e)(2) adopting Special Master Balaran's May 11, 1999 opinion [1691-1] be, and hereby is, GRANTED in part and DENIED in part. It is further

ORDERED that section II of Special Master Balaran's May 11, 1999 opinion, which is entitled "Work-Product Doctrine," be adopted, pursuant to Rule 53(e)(2) of the Federal Rules of Civil Procedure. It is further

ORDERED that plaintiffs' motion for sanctions pursuant to Rule 37(a)(4)(A) [1691-3] be, and hereby is, DENIED.

SO ORDERED.

DATE: _____

Royce C. Lamberth
United States District Judge